IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 350.

ALL SERVICE LAUNDRY CORPORATION, *Petitioner,*

v.

LILLIAN MAUD PHILLIPS, as Administratrix of the goods, chattels and credits of CLIFFORD R. PHILLIPS, deceased, JOSEPH BONURA, TONY ZUMMO, TONY SALADINO, CHARLES SALADINO, PHILLIP PERRI, ALBERT JETT, DANNY FANTO, THELMA DOUGLAS, ADA BERKELEY, individually and on behalf of all other employees of defendant similarly situated.

PETITION FOR REHEARING.

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March, 1946.

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PETITION FOR REHEARING.

To the Honorable Chief Justice
and the Associate Justices of the
Supreme Court of the United States:

Petitioner All Service Laundry Corporation, hereinafter referred to as "All Service", respectfully prays for a rehearing and reversal of the order hereinbefore entered on the 25th day of February, 1946, denying its petition for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit, and in support thereof respectfully shows:

Petitioner asserted four defenses to the complaint, only two of which are pertinent to this petition, they being:

(1) The individual plaintiffs were not engaged in interstate commerce or in the production of goods for interstate commerce or in a process or occupation necessary to the production of goods for interstate commerce.

(2) Petitioner was engaged in the operation of a service establishment, the greater part of whose servicing was in intrastate commerce within the meaning of Section 13(a)(2) of the Fair Labor Standards Act and therefore exempt from the Act. (R. p. 7.)

This Court decided the case of *Roland Electrical Co.* v. *L. Metcalfe Walling,* ——— U. S. ———, 90 L. Ed. 326, on January 28, 1946, just prior to the denial of the petition in this case. In the Roland case this Court ruled adversely to petitioner's claim with respect to exemption under Section 13(a)(2) of the Act, but the Court clearly construed and applied the phrase "in the production of goods for commerce" so as to support petitioner's other defense, to-wit, that the plaintiffs were not engaged either in interstate commerce or in the production of goods for such commerce, and to this extent the decision rendered in this case by the Circuit Court of Appeals for the Second Circuit (149 F. (2d.) 416) is in conflict with the basic principles announced by this Court in the Roland case.

In the *Roland* case it was *stipulated* that twenty-seven of the thirty-three customers to whom the services were rendered

> "... were engaged in the production of goods for commerce as defined in Section 3 of the Fair Labor Standards Act of 1938, 29 U. S. C. A. Section 203, 9 F. C. A. Title 29, Section 203, shipping at least a substantial portion of their total production to points outside the State of Maryland."

Following this Court's previous decision in *A. B. Kirschbaum Co.* v. *Walling,* 316 U. S. 517, 86 L. Ed. 1638, (where services were rendered to a tenant engaged wholly in the *manufacture* of goods for commerce), this Court said:

"The work of petitioner's employees has 'such a close and immediate tie with the process of production for commerce, and was therefore so much an essential part of it, that the employees are to be regarded as engaged in an occupation "necessary to the production of goods for commerce."' "

The basis of the Court's opinion on the question of original coverage in the *Roland* case is found in the following language taken from the opinion:

"If not supplied to the customers by employees of the petitioner, such customers would have to employ comparable employees of their own or of other contractors."

Mr. Justice Burton was careful to append a footnote (3) to tne opinion, containing the following statement:

"The result reached makes it unnecessary to consider whether any or all of the petitioner's employees were engaged 'in [interstate] commerce' as distinguished from the 'production of goods for [interstate] commerce.' "

In this case the stipulation with respect to the commercial activities of the customer is exactly contrary to that of the Roland case, the stipulation in the present case being:

"The defendant Star Overall Dry Cleaning Laundry Co., Inc., is *not* engaged in manufacturing any of the garments which it rents." (Emphasis added.)

(R., p. 16).

Furthermore, the Circuit Court of Appeals for the Second Circuit *expressly* held in the present case that the plaintiffs, who merely pressed the clothes after they were washed, were not engaged in interstate commerce even though Star Overall transported a small percentage of the laundry in interstate commerce, the coverage on this aspect of the case being excluded by the decision of this Court in *McLeod* v. *Threlkeld*, 319 U. S. 491, 497. The Circuit Court

of Appeals for the Second Circuit rested its inclusion of the plaintiffs within the Act solely upon the alternate provision relating to the production of goods for commerce, saying:

> "If these plaintiffs are within the statute it must be because they are engaged in the production of goods for commerce."

The Court then held that the cleaning and pressing of garments which were not in the process of manufacture or production but were only being serviced because they had become soiled after the sale and use by the ultimate consumer was work in an occupation necessary to the production of goods for commerce within the meaning of Section 3(j) of the Act.

It is earnestly insisted that this conclusion is manifestly erroneous. Clearly the phrase "necessary to the production" covers only the production, handling or work upon goods *as a part of the process of manufacture* either of the goods or some component part thereof as clearly implied by the decision of this Court in the *Roland Electrical* case.

As shown by the stipulation, the plaintiffs in this case in pressing the washed garments were not handling them in connection with the process of production or manufacture of the garments. The pressing was a step precedent to interstate commerce but it was not an act either necessary or incident to the *production* of the garments.

In this respect the holding of the Circuit Court of Appeals is in conflict with the express language of this Court in *Kirschbaum* v. *Walling*, 316 U. S. 517, 86 L. Ed. 1054, in which this Court in considering the scope of the phrase "production of goods for commerce", speaking through Mr. Justice Frankfurter, said:

> ". . . The normal and spontaneous meaning of the language by which Congress defined in Sec. 3(j), 29 U. S. C. A., Sec. 203 (j), the class of persons within the benefits of the Act, to wit, employees engaged 'in producing

> manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof,' encompasses these employees in view of their relation to the conceded production of goods for commerce by the tenants . . ."

In the *Kirschbaum* case Mr. Justice Frankfurter further said:

> "We cannot, in construing the word 'necessary', escape an inquiry into the relationship of the particular employees to the production of goods for commerce."

It seems abundantly clear that the language "handled, or in any other manner worked on", found in the definition of the word "production" in Section 3(j) of the Act, under the doctrine of *noscitur a sociis*, must be construed in its context so as to limit such handling and work to some part of the process of production as distinguished from the subsequent washing or pressing of the product after its completion, sale and use by the ultimate consumer. Manifestly washing or pressing *as a part of the process of manufacture* would be within the meaning of production of goods for commerce. It is equally clear, however, that washing or pressing long after the process of production ended, only for the purpose of removing soil as a result of the use of the finished product in the hands of the ultimate consumer, was never contemplated within the coverage of production for commerce even though (as in the present case) it might have been a step precedent to the transportation of such goods in interstate commerce. *Any other construction of the statute would render the Act universal in its application.* In any event the question is one of great importance which should be decided by this Court.

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a rehearing be granted and that the order of this Court denying the petitioner's writ of

certiorari to the Circuit Court of Appeals for the Second Circuit be reversed, and the writ be granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL.

As counsel for the petitioner I do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

STANLEY I. POSNER,
Counsel for Petitioner.